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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,771	03/24/2004	Richard D. Rhodes JR.	R-001	4283
7590 12/15/2005			EXAMINER	
Richard D. Rhodes, Jr. 13 Lil Nor Avenue Somersworth, NH 03878			PIERCE, WILLIAM M	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 12/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

TJH

**Office Action Summary**

Application No.

10/807,771

Applicant(s)

RHODES, RICHARD D.

Examiner

William M. Pierce

Art Unit

3711

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

WILLIAM M. PIERCE  
Examiner

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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#### **DETAILED ACTION**

##### ***Claim Rejections - 35 USC § 101***

Claims 1-12 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility as set forth in the previous office action and below in response to the applicant's remarks.

Applicant's amendments to the claims fail to overcome the 101 grounds for rejection for the reasons set forth in the previous office action. For example in the newly amended claims, if the thickness of the material *t* were made to be 8.6 inches, the diameter of the hole *D* would be 0. Such would not prevent the ball from rolling as disclosed.

##### ***Claim Rejections - 35 USC § 102***

Claims 1-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Galowitz as set forth in the previous office action and below in response to applicant's remarks.

##### ***Response to Arguments***

Applicant's arguments filed 9/28/05 have been fully considered but they are not persuasive.

Applicant argues that his invention has a different purpose (pg. 8, ln. 13) from Galowitz. However, such is not persuasive since intended use does not distinguish over the prior art in an apparatus claim. Moreover, most broadly, Galowitz shows a way for holding and retaining "recreational games use spherical balls" (col. 1, ln. 13). Such is considered to clearly suggest bowling to one skilled in the art. Note that motivation need not come from the reference alone and that the standard for motivation is what the art of record would have suggested to one of ordinary skill. It can come from 1) the teachings of the prior art, 2) the knowledge of persons of ordinary skill in the art and/or 3) the nature of the problem solved. See *In re Rouffet*, 149 F.3d 1350, 47 USPQ 2<sup>nd</sup> 1453 (Fed. Cir. 1998).

Like applicant's invention, Galowitz shows a plurality of openings matched to the shape of the ball that carries little or no weight and prevents rolling. Applicant has not shown where the diameter of the hole solves any particular problem or produces any unexpected results. The prior art prevents a ball from rolling when not in use in the same fashion as applicant's claimed invention. Clearly one skilled in the art would recognize that a ball would more easily roll out of a smaller hole and that a hole too large would seat the ball more securely affecting how easy it would be for one to remove the ball from the hole.

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**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address [bill.pierce@USPTO.gov](mailto:bill.pierce@USPTO.gov) or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.

  
WILLIAM M. PIERCE  
PRIMARY EXAMINER